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The following materials^{*} have been reproduced at the request of Committee member Mr. T. J. Kent. They deal with the Strong Council--Decentralization form of government, an alternative which would eliminate a strong executive authority whether in the form of a city manager or a strong mayor.

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** The Haefele essay attached is one of the three papers that were made available in 1972. It seems to be particularly relevant to discussions that are taking place in Berkeley today. The other papers described Swedish local government in general and the government of the city of Stockholm in particular.*

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Executive Government: Our Present Confusion *

Edwin T. Haefele

Thomas Jefferson, who said nearly everything worth saying and a good many things that are not, wrote on August 12, 1810 from Monticello to William Duane, editor of the political newspaper, Aurora, as follows: "Our law, language, religion, politics and manners are so deeply laid in English foundations that we shall never cease to consider their history as a part of ours and to study ours in [light of] its origins."

Within a generation of the time he wrote America had so turned westward that we lost all popular knowledge of the English foundations of our law and politics and began to change and extend our governmental structure in ways that were not supportable by those foundations. It may be useful to retrace the foundations in order to see where and when we lost them and hence lost their supporting strength for the government we constructed.

In modern times, the story begins in Stuart England with the conflict between the executive and the legislature, the Crown and Parliament. Sir John Eliot, who was to die in the Tower, speaks in Commons during the second Parliament of the reign of Charles I, "Our honour is ruined, our ships are sunk, our men perished; not by the sword, not by the enemy, not by chance, but ... by those we trust." The immediate focus of Eliot's attack was the incompetence of the King's favorite, Buckingham, but the citadel being stormed was Royal Prerogative. The English 17th century

* Title of speech given to the Washington Operations Research Council, October 22, 1970. Mr. Haefele is on the staff of Resources for the Future, Inc.

is the tale of free men taking the measure of the royal prerogative and wresting it by force of arms from two Stuart kings. When the Crown was given, by Parliament, to William of Orange in 1689 there was a clear notion, on both sides, that ultimate sovereignty remained with Parliament.

Within a generation of the Glorious Revolution in England the legislatures in most American colonies had successfully resisted the royal prerogative of the Crown-appointed Governors and like their English counterpart, the colonial legislatures were dominant by 1740 in fact if not yet in law. Legislative supremacy was a fact taken for granted by the Whig generation in America. Hamilton could use as argument in Federalist Paper No. 73 the statement "the superior weight and influence of the legislative body in a free government and the hazard to the Executive in a trial of strength with that body, affords a satisfactory security" [against executive dominance] with assurance that his audience would agree. One may pause a moment to doubt that Hamilton agreed with the proposition.

The whole sense of the system of government which was re-formed in the States and in the Federal Union in the 1780's was rooted in the belief that representative legislatures provided the surest mechanism for ordering the deep divisions to which mankind is prone into some viable social policies. The belief was not a faith in an untried theory, but a judgment based on nearly 200 years of English and American experience with bloody conflict over religion, control of foreign policy and civil liberty. No cavil about the limited extent of the franchise should obscure the point. The judgment was based on political history rather than political philosophy and the

writings of James Harrington, Algernon Sydney and John Locke played less of a direct role than is oft ascribed to them. The spirit of the Philadelphia Convention is well summarized by John Dickinson's words, "experience must be our only guide, for reason may mislead us." The American Constitution was, then, more the codification of experience than of reason and the Federalist Papers, the advocate for the Constitution, is experience translated as reason in order to persuade. That is why the Papers are more apt to baffle the modern reader than to enlighten him. When Madison argued that "by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impractical", he was trying to justify this belief in the efficacy of legislative process. Hamilton comes closer to explicating the mechanism when, in the final Paper he says, in another context, "many of those who form a majority on one question may become a minority on a second, and an association dissimilar to either may constitute the majority on a third." The legislative arena, where each issue brings forth its own coalition and no single coalition dominates on all issues, remains, as Madison envisioned it, the strongest protection against tyranny either by a majority or a minority.

The authors of the Federalist Papers felt no necessity to describe how, through vote-trading, intensities of feeling about different issues could be expressed. A New York Times headline of July 16, 1969, "Oil Drilling in Alaska? It Could Determine the Senate's Vote on ABM Issue" is a modern reflection of a fact known, and appreciated, by the pragmatic Dickinson as well as the more academic Madison.

The unique capacity of the legislature to resolve social issues (or as we would say today, to make social choices) did not blind the Founding Fathers to its faults. Legislative tyranny is possible. Both John Adams and Jefferson have left us ample evidence that they read 18th century history correctly. In his Notes on Virginia, Jefferson comments "173 despots would surely be as oppressive as one." The rest of the country did not discover this possibility until the 19th century, when it was apparent to all that unless legislatures in the States were restricted they would steal everything loose. Since most states started with sovereign powers unlimited except by power delegated to the federal government, the power to pillage was immense. Land grabs, special purpose legislation, railroad investment schemes, canal bonds and other inventions for private profit at public expense abounded. In desperation, the many constitutional conventions of the 19th century adopted new articles which severely limited the powers of the state legislatures to act and even more severely limited the power of the people to make further constitutional changes. It was an understandable but regrettable over-reaction. Moreover, reflecting the wave of egalitarianism in continental Europe, the people enacted laws and constitutional requirements for referenda and other direct democracy devices and often made them mandatory when state and local taxation and bond issuances were involved. One can leap ahead a moment to understand why the federal government, which had no such restrictions, would become the focus for new programs as they became needed.

America entered the 20th century, then, with its executive governments at all levels weak by original design, its state legislatures (the only ones with plenary powers) severely weakened by constitutional amendments, its understanding of its own system of government confused by the new enthusiasm for popular democracy, and ignorant of its own history of rejection of popular democracy, in the 17th century Commonwealth period in England, and in the 18th century Revolution in America. Given such weaknesses, reforms could not be far away. In the light of such confusions, the reforms could not be expected to help.

Compressing what follows almost to the point of caricature, it remains true to say that, in the 20th century, we began to use our business sense on the business of government. Since it has always been true that governments perform services, spend money, buy equipment and do other things which are not dissimilar from the activities of businesses, it is but a short step, in some minds at least, to judging government on business terms. Hence, at the beginning of the 20th century, it was clear to many that government was not efficient. This view arose at about the same time (prior to and just after World War I) that we became firmly middle-class in our values and goals. "The business of America is business" may be regarded as typical of the complacency about goals and the focus on means. The rise of the city manager profession, the professionalism of the civil service, the strong mayor plans, the non-partisan and at-large elections, the rise of the fallacy that there is no Republican way to collect the garbage are all reflections of the tendency to view government through the eyes of the public administrator and the business executive. At the heart of all these efforts was the driving American ambition to make the system work, and a profound and growing ignorance of what the system had been designed to do.

The depression of the early 30's is a convenient benchmark to measure the degree to which executive government (that part of government understandable on business terms) had again seized the initiative for public policy. The country turned to the Presidency for leadership, as in a war. Presidential leadership was forthcoming and the former drive for efficiency was reinforced by the need for new social programs. Federal grant-in-aid programs, which effectively put social choices at the federal level and used the states as administrative channels, became the chief device by which the federal executive initiative was maintained. (If that judgment seems harsh, read the biography of Huey Long and his fight to keep control of social choices at the state level.) Using the state and local governments as administrative channels, of course, reinforced the need for efficiency in their executive branches and making social choices at the federal level further reduced the importance and added to the impotence of state and local legislative branches. World War II simply raised all of the existing tendencies and trends by an order of magnitude.

After World War II we come into more familiar territory but with a different perspective. For when I now speak of the phenomenal growth in our powers to solve large-scale technical problems, one can see what a further impetus this gave to executive governments. Executive governments have large-scale technical problems; and engineering, economics, and systems analyses disciplines developed a number of sophisticated tools--cost-benefit, cost effectiveness, operations research, planning, programming and budgeting--to cope with the problems of executive government.

The tools and their users prospered until the middle 1960's or thereabouts, when resistance began to appear. In the highway area people began to chain themselves to bulldozers and trees. In the water resources area, people being flooded out for the benefit of downstream cities began to fight in the courts. In the central city people began to resist demolition for the benefit of suburbia. The young began to resist fighting a war for the benefit of somebody or other. Legislators, for example Senator Fulbright, began to rise in place and speak words which sound not dissimilar to those of Sir John Eliot. The responsiveness of the system, not its efficiency became the cry. The legitimacy of government was again being raised as a serious question, as it had not been since the 17th century of our history.

Our present struggles are reminiscent of 17th century England because the issue is the same now as it was then--a struggle against overweening executive power and the arrogant use of that power at all levels of government. Executive power has grown not by usurpation by any president, governor or mayor, but from circumstances compounded by ignorance of the consequences of such power. The scholars who, during the 1930's, drew on wartime history and one-eyed reading of legal precedents to provide the basis for wide powers of the Executive, did so as patriots, not as aspiring despots. Yet they were ignorant, and so too are those who call now for still increased executive powers to fight our current problems. For our conflicts today are conflicts about purpose, goals, and ends and these are not to be solved by any one majority, which is the best any executive government can muster. A President who asks for a mandate to govern asks for a gift denied to him by our Constitution. A Vice-President who insists a

President has the right to have legislation passed because he won the Presidency does not speak sense within the history of this Republic.

The reactions of the executive governments to the rising storm of criticism from the public have their parallels in our history. There are those who are offended by resistance to the "legitimate" actions of government which are taken, after all, on the basis of laws passed. Much legitimacy can, in fact, be marshalled in support of the position. So too did Bishop Laud and the Tories marshal overwhelming legitimacy behind the Stuart kings.

Some executive personnel respond by working manfully to construct a bureaucracy responsive to community values produced either conservatively, through expanded public hearings and community participation in planning, or more radically through "participatory" democracy with its cry "power to the people." The first has its counterpart in the extra legal "associations" of the 17th century and before, when the ministers of the Crown would round up prominent folk to join in support of some proposition or other, be it only a pledge for the safety of the King. The Levellers spoke all of the lines for "power to the people" and spoke them more cogently than they are now being spoken. The rhetoric was better in that century, perhaps because the personal stakes were much higher. As the Earl of Manchester remarked to Cromwell after the second battle of Newbury (October 1644), "If we beat the king 90 and 9 times, yet he is king still ..., but if the king beat us once, we shall all be hanged."

In listing executive reactions I should not leave out the solutions proposed by the creators of our problem-solving tools. If one is a cyberneticist, as is the first deputy mayor of New York City, E. S. Savas,

one sees salvation in feedback loops which will go, as they do in industry, through executive channels. Indeed, unless I have overlooked it, I think there is not one reference to the legislative branch of New York City's government in Mr. Savas' May 29, 1970 article in Science suggesting how the urban government crisis may be averted. It is Savas' administrators who are to have contact with people's wants and needs and it is not too harsh to say that his view of the operations of government does not differ in any fundamental respect from that of James I.

The worship of technical problem-solving is so widespread that examples may be useful to show how far back of technique the problems lie. One example is the planning that went into choosing a level of water quality in the lower Delaware, and a paragraph in a recent paper by the executive director of the Delaware River Basin River Commission may illuminate the problem,

The Delaware Estuary Comprehensive study selected various technical committees which would permit the voice of the estuary community in the development of recommended judgments. The committee on water use included four groups--one represented recreation, encompassing conservation interests in fish and wildlife; another was representative of the general public; a third represented industry; while the fourth was made up of representatives of local governments and planning agencies.

Simply the bland listing of such "representatives" should be enough. By whose warrant does any one of them represent anybody?

The water quality parameter they judged was the level of dissolved oxygen in various reaches of the estuary. What they had to go by, however, was a level of costs associated with each level of water quality and a range of benefits associated with each level. Since the benefits, to whomsoever accruing, had already been priced by the analyst, the issues presented to

the committees could have been judged by any normally gifted nine year old child. This is not to say that difficult technical problems were not at issue, only that the social choice issues were pre-judged by the technicians in their presentation of aggregate measures of benefits and costs. The path to the "right" decision was well-marked.

For, sad to say, there are no neutral techniques of benefit estimation. Aggregate measures won't do for many of us are unwilling to let a dollar's benefit to a millionaire be equal to a dollar's benefit to a ghetto dweller. Using "willingness-to-pay" measures, which take market-derived data to make benefit estimates (in the Delaware, a recreation day was "worth" one dollar and fifty cents by this measure) will not serve on technical grounds. Such estimates stem from a given distribution of income. If we are trying, in part, to change that then we must solve both the efficiency (aggregate) question and the distributional question simultaneously. Since such solutions are not feasible in economics (though they are commonplace in legislative processes) the economist prefers to deal in aggregates and leave income distribution questions to other disciplines and other times. The aggregate measure, it is said "will serve as a benchmark for comparison" in any event. It usually also serves as a club (for whatever group it happens to favor) or as a technical hurdle over which layman and many legislators cannot pass. Both uses were evident in the Delaware case.

Another example comes in the area of locating urban highways, where perhaps we have the best illustration of the honest expert up against the confusing vagaries of public opinion. The most candid expert reaction to the whole dispute on highway location must be that of the man who says

"buy them off." This was a favorite 17th century device. The Long Parliament of the Restoration was characterized as "being so much practiced upon that the price of every man was known." The highway purse is, indeed, far deeper than any possessed by Charles II, and it is now in active use, taking account of bus needs, buying up transit right-of-way, and relocating families displaced. But as an interested spectator at a recent hearing, I was startled to find in the highway opposition corner a retired Air Force type, armed to the teeth with law, precedent, administrative regulations and righteous indignation. As I reflect on the previous impenetrability of the Bureau of Public Roads bureaucracy, and the previous naivete of its antagonists, I begin to look forward with some interest to the outcome. One benefit of our defense effort that we may have overlooked is the infusion into the body politic, through early retirement, of some people with good health and free time, deeply skilled in the workings of large bureaucracies, who own real estate in the path of urban highways.

The point, however, is that no technique of highway planning, least of all an increase in the public hearing process, can solve a question of highway location. Construction costs of alternatives can be calculated, but the decision of where to put it and what costs to bear is a social choice. It is a choice of conflicting wants, needs, fears, greeds, and wills. It is indeterminate, and it requires political resolution by representative processes.

Highway planners, particularly those in the Bureau of Public Roads, are earnest in their desires to respond to community values. As good engineers they seek ways to assign weights which will "take community

values into account" or "put them in as constraints." They seek models which will give wide ranges of options to "the decision maker." Political weights and constraints can be put into optimizing and simulation models of public decision-making but to do so is an outrage in the pure sense. It violates our system of government. Just as one cannot price all the benefits and then expect a political process to take over (every political actor must put his own relative prices on each benefit), so one cannot put political weights or constraints inside the models nor ask the "decision-maker" to do it.

Such weights and constraints are recognizable after the political settlement of an issue occurs. They are outputs of the process, not inputs. If they had been known at the outset, the resolution of the problem would have been obvious. They develop as the issue is formed and reformed, as coalitions develop, as trade-offs with other issues occur, and the issue finally voted up or down. No one politician or group is so prescient as to be able to tell you all this in advance.

Solving a model with "a reasonable range of political weights" is, therefore, pure baloney from an analytical point of view and pure poison from a political point of view. Not many politicians are willing to play the weighting game, since few wish to be in the position of seeming to assign weights to people's lives, hopes, aspirations and fears. If he is told he has only to assign weights to outcomes, he will think about his opponent who is eager to translate these into human terms for the public.

The social choice mechanism of American government, of which the legislative politician has become a neglected part, does not derive its rationality from a business analogy; its objective function is not efficiency. It is a mechanism for going from individual preferences to social choices which works provided certain conditions are met. These include:

- (1) the citizen must be the unit of representation, not interest groups, not other governments, not industries.
- (2) the representative governments must be of appropriate size, i.e. matched to communities and regions that have within them many problems of mutual concern.
- (3) the representative governments must be general purpose governments with general taxing powers, i.e. not be broken up into special districts or special-purpose authorities insulated from politics by municipal bond experts.
- (4) the representatives must have been selected through a two-party process in which the parties took stands on the issues of concern to the citizens. (In a little-remembered passage Madison said "an extinction of parties necessarily implies either a universal alarm for the public safety, or an absolute extinction of liberty.")
- (5) the representative governments must not be so dominated by committee systems that they inhibit trading on all issues by all legislators.

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These conditions were approximately met in the 18th century. They are far from being met today. Indeed the growth of executive government, and the parallel growth of our quantitative techniques of problem solving are a response to the need to make choices that are not being made in the legislatures. Legislative inertia, myopia and worse are everyday facts of life.

Yet few facts are plainer than these. Executive government will not suffice for a free people. Determinate problem-solving techniques cannot solve problems of social choice. The governmental structure which we have depends on strong general-purpose legislatures at every level. Legislatures have a unique capacity to make social choices.

America inherited a system of government which, if used, is capable of withstanding greater social conflict than we now have, for it was forged in hotter fires. To use it properly requires that we heed the words of the Whig member of Parliament for Bridgewater, George Bubb Dodington, who wrote his foster son in 1756 as follows:

"A gentleman must love his country, and look a little into its constitution, to know why he loves it."